IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 323 of 1993

Date of Decision: 11.10.2007

M/s Salecha Cable … Appellant

Versus

H.P. SEB & anr. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?

For the Appellant : Mr.Bhupender Gupta, Sr. Advocate with Mr. Neeraj Gupta, Advocate.

For the Respondent(s) : Mr. K.D.Sood, Advocate.

Deepak Gupta, J.(Oral).

This appeal is directed against the order dated 22.10.1993 passed by a Learned Single Judge of this Court in OMPs No.40 and 41 of 1993 filed in Civil Suit No. 174 of 1992, referring the dispute raised by the appellant (hereinafter referred to as the plaintiff) to the Arbitration of the Chairman HPSEB, or his nominee.

Briefly stated the facts of the case are that the plaintiff instituted a suit for recovery of Rs.35,77,599/- under clause 37 of the Civil Procedure Code read with Delhi High Court Original Side Rules, 1967, as applicable to the High Court of H.P. The plaintiff herein claimed this amount on account of supply of various materials made by it to the respondent- HP SEB (hereinafter referred to as the defendant). Notice was served upon the defendants. They filed two OMPs. OMP No.40 of

1993 was filed for leave to defend the suit and another OMP No.41 of 1993 was filed on the ground that the proceedings in the suit be stayed in view of the fact that there is arbitration agreement between the parties and the matter was required to be referred to arbitration.

The plaintiff contested these two applications. The first application was contested on the ground that after the amendment made in the Code of Civil Procedure (Amendment Act 1976) a summary suit on a written agreement was maintainable and the amended provisions of the Civil Procedure Code will prevail over the Original Side Rules of this Court.

The suit filed in the present case was on the basis of a written contract. In terms of the Code of Civil Procedure, as amended in 1976, a summary suit under Order 37 can be filed on the basis of a written contract entered into between the parties. However, under the Original side Rules of the Delhi High Court as then applicable to the High Court of Himchal Pradesh, a summary suit could have only been filed if the suit was based on a Bill of exchange, Hundi or Promissory note. The learned Single Judge followed the judgment of the Full Bench of the Delhi High Court in **M/s Printpak Machinery Ltd. New Delhi** v. **M/s Jay Kay Paper Congeters, New Delhi**, AIR 1979 Delhi 217, wherein it was held as follows:

> "16. Section 97(1) of the amending Act was intended to disencumber the Code of accretions gathered over the years due to amendments made by State Legislatures and High Courts, except to the extent that they were consistent with the Code as amended by the Act. In other words, the purpose of the amending Act was to present a renovated Code as the new starting point, as had also been done in 1908. It was not the purpose to

> repeal all other and independent laws pertaining to procedure. Historically the original side of a High Court had always been treated on a special footing. As S.129 shows, it has always been governed by its own rules in preference to those in the Code. The amending Act contains no indication that it was intended to depart from that position. Had there been any such intention, the obvious course was to amend S.129. But it has remained fully intact. So has S. 4 of the Code and even S. 122."

The learned Single Judge following the aforesaid decision held that the Original Side Rules of the High Court being special law shall prevail over the Code of Civil Procedure which is the general law. This law still holds the field and we are in respectful agreement of the same. We consequently, uphold the decision of the learned Single Judge in the present case that the original side rules shall prevail over the C.P.C. and, therefore, the summary suit was not maintainable. Therefore, the suit based on a written contract could not have been filed as a summary suit.

As far as the second point is concerned, it is apparent that there is an Arbitration clause 18 which reads as follows:-

> "**18. ARBIRATION**: In case of any dispute, question or difference whatsoever between the supplied and purchaser upon or in relation to or in connection with contract, the same shall be referred to the sole arbitration of Chairman, Himachal Pradesh State Electricity Board, Shimla, or his nominees and shall be subject to the provisions of Indian Arbitration Ac, 1940 and Rules framed thereunder or any statutory modification thereof."

The learned Single Judge held that though the dispute relating to non-payment of price is not a dispute arising out of the contract

but held that there was a claim by way of set off and as a portion of the amount claimed was by way of interest on the principal amount, the matter could be referred to arbitration. He, accordingly, stayed the proceedings in the suit and referred the dispute to arbitration of the H.P. SEB, Chairman or his nominee in terms of clause 18 of the Arbitration agreement entered into between the parties.

The learned Single Judge has rightly held that the dispute regarding payment of interest is a dispute arising out of the arbitration agreement. Consequently, all the disputes arising out of the contract between the parties had to be referred to the arbitration. There cannot be peace meal decision of the disputes.

We, therefore, find no merit in this appeal which is dismissed with no order as to costs.

(Deepak Gupta), J.

October 11, 2007. (V. K. Ahuja), J.

s.